

In still another section of the vast Hall of Science industrial chemical companies will show the contributions of modern chemistry in scientific nutrition with all its import to the health of man. Other displays by the chemical industry will show the development of synthetic plastics, compounds which are beginning to be of great importance in improving man's comfort and industrial efficiency.

From the viewpoint of the layman, the medical exhibits of the San Francisco Fair will show how the application of precautionary measures can help prevent the inception of disease and the spread of infection. Every field of medicine is being drafted to help carry out this ambitious program.

For additional information, address Golden Gate International Exposition, 585 Bush Street, San Francisco.

PROPOSED INITIATIVE: MEDICINE AND SURGERY*

Proposed Initiative Law: Sponsors Hoping to Place Same on 1938 State Election Ballot

The Attorney-General has entitled and summarized the chief purposes of the proposed amendment and the points of such as follows:

Medicine and Surgery—Initiative.—Defines "practice of medicine" as use or prescription of poisonous drugs or medicinal preparations in treating human ailments, and remedying results of violence of accident by other than orthopedic surgery, excluding from definition all other healing practices. Provides penalties for unnecessary major surgery and creates conclusive presumption that surgery unnecessary if diagnosis is erroneous or no pathology is found justifying operation. Creates conclusive presumption of unskillfulness if person operating has less than five hundred hours' academic surgical training or has taken part in less than fifty major operations. Requires prescriptions be written in English language.

The people of the State of California do enact as follows:

PUBLIC HEALTH LIABILITY ACT

An Act to protect the public health by providing terms and conditions upon which major surgery may be performed and upon which prescriptions for any substance for treatment of human beings may be issued and dispensed; providing liabilities for the advising of or the performing of unnecessary or unskillful major surgical operations on human beings; defining major surgery and minor surgery, and practice of medicine requiring reports following major surgical operations; repealing all acts or parts of acts in conflict herewith. Provides penalties for violation of Act.

Section 1. This Act shall be known and cited as the "Public Health Liability Act."

* For further comment concerning this proposed law, the sponsors of which are seeking approval from Public Health Committees of Chambers of Commerce and other organizations, see in this issue, on page 5.

The copy of this Initiative came into our hands as the manuscripts for the January issue of CALIFORNIA AND WESTERN MEDICINE were going forward to the printer. For the information of California Medical Association members the letter which was received by members of the Public Health Committee of the Los Angeles Chamber of Commerce is printed below. In the text of the Initiative, the italics have been inserted by the Editor, to permit easier reference.† Letter to the committee members follows:

LOS ANGELES CHAMBER OF COMMERCE

Los Angeles, California,
December 16, 1937.

To All Members of the Public Health Committee,
Los Angeles Chamber of Commerce.
Dear Committee Member:

A special meeting of the Public Health Committee will be held at 12:15 p. m. on Wednesday, December 22, at the Los Angeles Chamber of Commerce, for the purpose of discussing the Public Health Liability Act, Initiative Petition No. 29.

Mr. Frank W. Walden has been invited to meet with the committee at this time, as well as a number of other interested individuals.

This is an important matter, and I hope that all committee members will be present.

Very sincerely yours,

LOS ANGELES CHAMBER OF COMMERCE.

Geo. H. Cecil,
Secretary, Public Health Committee.

† Later memo: On Wednesday, December 22, the Public Health Committee of the Los Angeles Chamber of Commerce voted to recommend nonapproval of this proposed initiative law.

Sec. 2. It shall be unlawful for any person to perform any unnecessary major surgical operation upon any human being or to sever any tissue of a human being unnecessarily, or to advise or prescribe for any unnecessary major surgical operation or the unnecessary severance of any tissue of a human being.

Sec. 3. An unnecessary major surgical operation is conclusively presumed where no pathology is found to exist which would justify a major surgical operation as performed, or a major surgical operation performed in pursuance of a wrong diagnosis, or a major surgical operation performed from which the patient could not reasonably be expected to receive the relief of disorder upon which the operation was promised.

Sec. 4. It shall be conclusively presumed that a major surgical operation was unskillfully performed unless the person so performing the said operation has had at the time of performing the said operation not less than five hundred hours of training in the subject of major surgery in a duly chartered college of healing; or, who at the time of the adoption of this Act attended and took part in not less than fifty major surgical operations prior to adoption of this Act; or if from the results of the said operation it is proved that the person performing the said operation did not have the necessary skill or training requisite to perform such an operation.

Sec. 5. Nothing in this Act shall be construed as justifying any person for the negligent performance of any major surgical operation regardless of skill or training.

Sec. 6. A wrong diagnosis is hereby defined to be a wrong conclusion relative to a major surgical procedure, or a wrong conclusion respecting the nature or character of the patient's condition, or a wrong determination of the existing pathology in the patient.

Sec. 7. The burden of proof of proper training, experience, skill and diagnosis shall be upon the person performing the said operation as a matter peculiarly within the knowledge of the said person.

Sec. 8. Before performing any major surgical operation, the person advising, if he is not to personally perform the said operation, and in any case the person who is to perform the said operation shall sign a written diagnosis of the patient's condition and the necessary purpose of the proposed operation in detail and shall deliver a copy of the said diagnosis and purpose of the proposed operation to the patient or his designated representative. The said writing shall be fully descriptive, definite, and certain. Any waiver or modification of this provision shall be void.

Sec. 9. Immediately following the performance of any major surgical operation, and in not more than five days thereafter, the person performing the said operation shall forward all, and each and every part, of excised normal or pathological tissue removed from the patient in the said operation to the State Department of Public Health, together with a copy of the surgical record. It shall be the duty of the said State Department of Public Health to examine the said tissue and to make a full and complete laboratory and other indicated report of findings from the specimens and tissue received. The making of a false report, or the making of an incomplete report as required herein shall be a violation of the Act. The report herein required shall be delivered to the patient or any designated representative in not more than twenty days after receipt of the said tissue, and there shall be no charge for the said report beyond the actual cost thereof.

Sec. 10. The said Department of Public Health shall retain the said tissue in proper state of preservation for a period of three hundred days unless that at any time before disposal of the said tissue or specimens on written demand, it shall deliver the same to any laboratory designated by the patient or his authorized representative. The patient may have a professional representative present during the examination of the aforesaid tissue by the said Department of Public Health.

Sec. 11. Provided, however, that where it appears that an emergency exists in fact the provisions of Section 8 shall not need be complied with prior to the operation, but that the said diagnosis shall be filed within forty-eight hours after the said operation has been performed. An emergency is defined to be the result of a traumatism or a condition existing that could not normally be calculated upon. Provided further, that, where this emergency provision is proved to have been used as a subterfuge to avoid

any other provision of this Act, the liability and penal provisions of this Act may be doubled in the sound discretion of the court and within the provision of the law appertaining.

Sec. 12. *Major surgery is defined* as that form of surgery in which it is necessary to penetrate healthy tissue in order to reach morbid or diseased tissue. Morbid tissue shall be understood to include fractures or injured tissue due to traumatism.

Sec. 13. *Minor Surgery is defined* as that form of surgery in which it is not necessary to penetrate healthy tissue in order to reach morbid or diseased tissue. It shall be understood that penetration of healthy tissue when such penetration is limited to the subcutaneous shall be within minor surgery.

Sec. 14. *The practice of medicine is defined* to be the use or prescription of drugs or what are known as medicinal preparations for human beings and those things that are incidental thereto; and remedying as far as possible the results of violence and accident by other than orthopedic surgery, all other practices are declared not to be within the practice of medicine.

Sec. 15. The term "*drug*" is defined to mean any substance, vegetable, animal, or mineral, simple or compounded, in the composition of medicine or what are known as medicinal preparations.

Sec. 16. "*Medicine*" or what are known as "*medicinal preparations*" is defined to mean any drug or combination of drugs applied, prescribed, or to be used for the purpose of curing, mitigating, or alleviating physical or mental disease of human beings. The application, prescription or use of nonpoisonous substance, vegetable or animal, simple or compounded, shall not be construed as medicine or what are known as medicinal preparations, oils, liniments, or aromatics used for external purposes, shall not be construed to be medicine or what are known as medicinal preparations.

Sec. 17. *Every person who takes part in or assists*, in any manner whatsoever, in any unnecessary surgery as herein set forth, shall be equally liable as a principal, except that any nurse or student nurse having no knowledge of the lack of necessity of the said operation shall be relieved of all liability as herein provided; every hospital or institution, or hospital or institutional corporation, charitable or otherwise, which permits any unnecessary operation as herein defined, in its hospital or institution, shall be equally liable as a principal.

Sec. 18. *That every person, institution, hospital, institutional or hospital corporation, violating any of the provisions of this Act shall be civilly liable for the actual damages suffered and an additional sum of \$500.*

Sec. 19. *It shall be unlawful for any person to issue a prescription for any substance for any disease, deformity, or mental or physical condition of any human being, whether such substance shall be what are known as drugs or medicinal preparations or otherwise, in other than the English language, or to use or dispense any such prescription unless reduced to writing in the English language; or to issue or dispense any substance under a prescription which does not contain upon the container thereof a label setting forth a copy of the prescription in full, and if the said prescription be for what is known as a patent medicine, the label shall state "this prescription is for a patent medicine" and the name of the patent medicine. Nothing in this section shall be construed to prohibit the use of a language other than English, when made in addition to the English language and constituting a fair interpretation thereof.*

Section 20. Any action under the provision of this Act shall be commenced within one year of the time the liability was incurred.

Sec. 21. *In the event that any person convicted under the provisions of this Act is licensed to practice any of the professions characterized as a healing art, the board or boards of examiners of any such healing art shall suspend the license to practice of the person so convicted for not less than six months, nor more than two years. It shall be a violation of this Act for such person to practice during such suspension.*

Sec. 22. *Any violation of the provisions of this Act shall constitute a misdemeanor and shall be punished by imprisonment in the County Jail for a period of not more than six months, or by a fine of not more than \$500, or by both such fine and imprisonment.*

Sec. 23. All Acts or parts of Acts in conflict therewith are hereby repealed.

Sec. 24. Any section, subsection, sentence, clause or phrase of this Act for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The people hereby declare that they would have passed this Act, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clause or phrases may be declared unconstitutional.†

INFORMATION CONCERNING NEW LABORATORY LAW*

1. A *clinical laboratory* is any place or establishment where any tests, no matter how limited in variety, are made for the investigation of the existence or progress of disease.

2. A *technologist* is a person who directs a laboratory and who holds a license as a technologist.

3. A *technician* is a person who holds a license as technician and who works under the direction of a technologist or of a licensed physician and surgeon.

4. After January 1, 1938, no one may conduct a clinical laboratory unless he is either a technologist or a licensed physician and surgeon.

5. After January 1, 1938, no one may work in a clinical laboratory unless he is a technologist, a technician, or an apprentice.

6. A person may acquire a license as a technologist without examination, provided he has had five years' experience actually directing and at the same time working in clinical laboratories, all of which were completely equipped for, and doing work in all of the sciences of bacteriology, serology, biochemistry, parasitology and related subjects, the last year of which immediately preceding the passage of the Act must have been in California, and provided further that he makes application for the license before January 1, 1938.

7. A technologist's license may be secured by examination, further requirements being that he hold a bachelor's degree in one or more of the fundamental sciences pertaining to laboratory work, from a recognized institution and that he also possess five years' experience, one year of which has been as chief technician in a laboratory, all laboratories being of grade and standard acceptable to the Board of Public Health.

8. Certificates of licensure for clinical laboratory work of limited range will be issued without examination as provided in Section 4 of Chapter 804, to persons presenting evidence of experience in any phase of clinical laboratory work, totaling three years, had within the period of five years immediately preceding the effective date of the Act, one year of which shall have been in laboratories within the State of California. Such certificates will be issued one for each of the general divisions of the work, i. e., bacteriology, serology, biochemistry, and hematology, and in special and particular instances may be issued for still more limited fields of activity, in which case the certificate will set forth particular tests that may be practiced.

The certificates issued under this provision will carry the statement that the license is issued without examination, under the provisions of Section 4 of the law. Graduates of a university recognized by the Board, who hold the A. B. degree, secured with a major in one of the medical sciences, will be credited with the first two years of the required experience, but one year's practical experience in an acceptable laboratory in California must be shown.

Application for technicians' licenses without examination must be made before January 1, 1938.

The fee for a technician's license without examination is one dollar, payable with application. The fee will be returned if the application is rejected.

9. Certificates will be issued to technicians by examination, each certificate entitling the holder to receive a license permitting him to engage in the work covered by the certificate.

† This proposed amendment does not expressly amend any existing law; therefore, the provisions are new provisions added to existing law.

* Chapter 804, California Statutes of 1937.